



Paper No. 5

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**COPY MAILED****JUL 3 1 2002****OFFICE OF PETITIONS**

In re Application of  
Leonard et al.  
Application No. 10/046,451  
Filed: January 14, 2002  
Attorney Docket No. 1867 P 025

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: DECISION DISMISSING PETITION  
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This is a decision on the petition filed April 15, 2002, requesting that the "Notice of Omitted Item(s)" mailed on February 5, 2002, be withdrawn.

On January 14, 2002, applicants filed the above-identified application. On February 5, 2002, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" (Notice), stating that the application had been accorded a filing date of January 14, 2002, and advising applicants that page 23 of the specification appeared to have been omitted.

In response, on April 15, 2002, applicants filed the present petition, a copy of page 23 of the specification, and the \$130.00 petition fee. The petition was accompanied by a postcard receipt.

Upon review of the record, 22 pages of specification (pages 1-22), including claims and the abstract are located among the application papers. However, page 23 of the specification has not been located in the official file.

Initially, the Office notes that the postcard receipt does not contain a date-stamp acknowledging receipt of the application papers in the United State Patent and Trademark (USPTO). Moreover, the postcard receipt does not itemize with particularity the total number of pages of specification, including claims and the abstract. Rather, applicants' postcard receipt lists the papers being filed on January 14, 2002, as follows: 1. Check No. 10917 in the sum of \$824 as filing fee for 17 claims/4 indep., 2. Continuation Patent Application Transmittal under 37 CFR 1.53(b), in duplicate, 3. Copies of Response to July 12, 2001 Office Action as filed Dec. 12, 2001 in parent application, 4. Copy of the specification, claims and abstract as filed in parent application, and 5. Copies of five Declarations/Powers of Attorney as filed in parent application.

As set forth in Section 503 of the Manual of Patent Examining Procedure, in pertinent part:

A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie

evidence of receipt in the PTO of all the items listed thereon on the **date stamped thereon by the PTO. The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested.** For example, the postcard should identify the applicant's name, applicant identifier, application number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application), etc.

The postcard receipt will not serve as prima facie evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings, etc.) of an application if one of the components or portion of a component is found to be missing by the PTO. Each separate component should be specifically and properly itemized on the postcard. (Emphasis added).

Because the postcard receipt does not contain a date-stamp by the USPTO and does not properly identify and itemize the papers, it does not serve as prima facie evidence that page 23 of specification was filed on January 14, 2002.

Accordingly, the petition is dismissed.

It is noted that the application transmittal letter identified this application as a continuation application of prior application No. 09/603,560, filed June 23, 2000, and specifically incorporated by reference the disclosure of the prior application.

Section 201.06(c) of the Manual of Patent Examining Procedure states that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application

transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (Emphasis supplied).

Obviously, in view of the incorporation by reference of the prior application, page 23 of the specification is not new matter if it was a part of the disclosure of the prior application. Applicants may file an amendment to include page 23 of the specification without a petition.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of January 14, 2002, with the application papers filed on that date.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

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